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Committee Secretary
State Development, Natural Resources and
Agricultural Industry Development Committee
Parliament House
George Street
Brisbane Qld 4000

By email sdnraidc@parliament.qld.gov.au

Dear Secretary

SUBMISSION ON THE ECONOMIC DEVELOPMENT AND OTHER LEGISLATION AMENDMENT BILL 2018

Logan City Council welcomes the opportunity to make a submission on Economic Development and Other Legislation Amendment Bill 2018 (the Bill) to the State Development, Natural Resources and Agricultural Industry Development Committee.

As a local government which has two priority development areas in its local government area the Council is particularly interested in the amendments proposed by the Bill.

Earlier this year Council officers met with representatives from Economic Development Queensland regarding proposed changes to the Economic Development Act 2012 and accept that the proposed amendments to the Economic Development Act 2012 are generally consistent with the spirit and intent of the engagement.

In particular, Council supports amendments that provide powers for investigation and enforcement of PDA development offences and related matters and support the amendment to give MEDQ powers to give show cause notices and enforcement notices for development offences.

However, the Bill introduces new amendments to other Acts that Council has not had sufficient time to consider, as such this submission is provided based upon a preliminary review only.

Provisional priority development areas

The Economic Development Act 2012 (ED Act) currently permits the MEDQ to declare a provisional priority development area (PDA) only if:

- (a) the type, scale, intensity and location of proposed development for land in the area does not compromise the implementation of any planning instrument applying to the area; and
- (b) there is an overriding economic or community need to start the proposed development quickly (see section 34(3) of the current ED Act).

The Bill proposes to remove both of these restrictions on declaring a provisional PDA which consequently would permit a provisional PDA to be declared which will compromise the implementation of a planning instrument applying to the area.

The Bill also proposes to remove the requirement to give public notice of a PDA development application for reconfiguring a lot or making a material change of use (see section 35(2)(c) of the current ED Act).



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Whilst the Bill proposes that a proposed provisional land use plan be publicly notified, Council is concerned that the removal of the restrictions on the making of a provisional PDA will enable their application in circumstances where there is no overriding economic or community need for development and which compromises the legitimate community expectations for the use of the relevant land.

Council notes that the proposed amendment is not consistent with the intent for provisional PDAs as expressed in the original explanatory notes for section 34 of the Economic Development Bill 2012 which provided as follows:

"Provisional PDAs are intended to apply in very limited circumstances only where development can be brought to the market quickly and where the development is consistent with community expectations ...

Provisional PDAs are intended to provide for development that is consistent with community expectations as expressed in the local government's planning scheme. An example is the proposed development is a use that is the same use proposed under the planning scheme although it may be at an increased intensity. Development sites are generally small, distinct sites containing single uses, where development can be progressed swiftly utilising the planning regime of this Act and brought to the market generally within the life of the provisional PDA."

Given the limited nature in which provisional PDAs were intended to be used, Council submits that the proposed extension of the circumstances in which they can be used, is not warranted and the proposed amendment should be withdrawn.

Draft Provisional Land Use Plans and Provisional Land Use Plans

The Bill proposes to replace sections 35 and 36 of the ED Act. Section 35(2)(b) of the ED Act currently requires that a PLUP must not compromise the implementation of any planning instrument applying to the area. Again, this removes an existing restriction on declaring a PLUP.

The proposed new section 36C(3) of the ED Act will require that the relevant local government be consulted, but only in the way that the MEDQ "considers appropriate" or based on "reasonable endeavors". This level of consultation on a draft PLUP does not, in our view, amount to the same protection for a local government in terms of its planning direction for the area, including the PDA or PPDA, as the current section 35(2)(b) of the ED Act.

Similar comments apply in relation to the proposed new process for the MEDQ to amend a PLUP in the proposed new chapter 3, part 2, division 1, subdivision 2 of the ED Act (clause 24 of the Bill).

Effect of repealing a PDA and replacing it with a new PDA on PDA development approvals

The explanatory note to clause 30 identifies that *"Experience indicates that there may be circumstances when the most appropriate action in response to changing circumstances is for a PDA to be replaced by a new more extensive PDA which has a new or extended purpose ..."*

Clause 39 of the Bill proposes the insertion of a new section 50 in the ED Act which identifies that if land ceases to be in a PDA a PDA development approval is taken to be a development approval under the Planning Act 2016 (Planning Act). It is unclear whether a PDA development approval is intended to convert to a development approval under the Planning Act in circumstances where land only temporarily ceases to be in a PDA where that PDA is being replaced by another PDA.

Council submits that the Bill be amended to clarify the status of a PDA development approval where a PDA is repealed and replaced by another PDA.

Administration of converted PDA development approvals

Council recognises that where a PDA is repealed it is necessary to put in place an alternate regime to manage PDA development approvals.

Council, however, is concerned that the regime proposed by the Bill where PDA development approvals are converted to development approvals under the Planning Act will impose an additional administrative burden on the Council to administer an assessment process under the ED Act which is inconsistent with the assessment process administered by the Council under the Planning Act.

Examples of inconsistencies between PDA development approvals and development approvals under the Planning Act are identified in the following sections proposed to be inserted by clause 39 of the Bill:

- (a) section 51AI(1) which provides that a development condition of the PDA development approval is taken to be a development condition of the Planning Act approval even if the condition could not be imposed under the Planning Act;
- (b) section 51AQ(4) which provides for a regulation to be made to set out how a PDA development approval is to operate when transitioned to a development approval under the Planning Act.

Council submits that it would be more efficient for local governments to administer converted PDA development approvals if the Bill is amended to include a requirement that PDA development approvals be more consistent with development approvals under the Planning Act.

Funding of sub-regional infrastructure

As the Council is responsible for providing local government infrastructure to service development within its local government area including priority development areas Council is concerned to ensure that development in PDAs makes an appropriate contribution towards the cost of funding infrastructure necessary to service that development.

MEDQ currently sets sub-regional charges and value capture charges for development in PDAs in its infrastructure funding framework. In the event, a PDA is revoked existing PDA development approvals will convert to become development approvals under the Planning Act.

Council is concerned the limitation proposed by clause 39 which will insert section 51AQ in the ED Act will restrict the Council from imposing infrastructure charges where the infrastructure funding framework is no longer maintained for a former PDA.

Council would like confirmation that the Bill will ensure adequate funding for the provision of infrastructure necessary to support the development of PDAs.

PDA accepted development and PDA assessable development

The Bill proposes changes to section 33 of the ED Act to use the current terminology for development categories that are in other legislation (i.e. accepted development rather than self-assessable and exempt development). In addition, this proposed change introduces the ability for a regulation to categorise development.

The Bill also proposes to alter section 176 of the ED Act to include a reference to categorising development as assessable development or accepted development as one of the things a regulation may do.

The changes could result in Council not being consulted on the proposed regulation that categorises development for land that is in its local government area.

PDA exemption certificates

Clause 78 introduces exemption certificate for PDA assessable development. The circumstances in which the MEDQ may give an exemption certificate is equivalent to those identified in the Planning Act for a local government. While there is a requirement for the MEDQ to consider any relevant State interest before giving a PDA exemption certificate, we have not been able to identify any requirement for the MEDQ to consult with the relevant local government. Given that a PDA exemption certificate attaches to premises and any use that is a natural and ordinary consequence of development carried out under the PDA exemption certificate will be taken to be a lawful use, this could be of some concern to councils that ultimately inherit any consequences.

Exclusions relating to environmental nuisance or environmental harm

Schedule 1 of the Environmental Protection Act 1994 sets out a number of exclusions to the environmental nuisance/harm offences, which presently include environmental nuisance caused by development carried out under a Planning Act development approval that authorises the nuisance. The Bill proposes to include a reference to nuisance caused by PDA development in two stages. Immediately upon assent of the Bill, the exclusion will include development carried out under a PDA development approval. Upon proclamation, the

exclusion will also include reference to development carried out under a PDA exemption certificate under the EDA.

The new exclusions themselves should be of no real concern given that they align with existing exclusions under the Planning Act. However, if Council were to seek to prosecute environmental nuisance offences, PDA development approvals will curtail the ability to do so for development carried out under a PDA development approval, hence the ongoing general desire for councils to be consulted on decisions by the MEDQ.

Validation of infrastructure charges notices given under the Sustainable Planning Act 2009

Council notes that clause 182 of the Bill proposes to insert section 344 in the Planning Act to clarify that infrastructure charges notices given under the Sustainable Planning Act 2009 (SPA) were and always have been valid.

Council supports this proposed amendment to provide certainty to applicants and local governments regarding the status of infrastructure charges notices issued under the SPA.

Conclusion

Council thanks the Committee for the opportunity to make this submission.

If you would like any further information or clarification of the matters contained in this submission please do not hesitate to contact [REDACTED]

Yours faithfully



Silvio Trinca
Acting Chief Executive Officer